

Annex 1.4 - Consumer Protection analysis

Our proposals will make the Accounts Rules shorter, simpler and therefore easier to understand and comply with. The changes will also allow more flexibility for firms, while introducing a much clearer focus on the protection of client money.

However, there are of course some risks in the new approach which need exploring, particularly in terms of how the proposals for a change in definition may impact on the level of consumer protection. The table below addresses the potential impacts by looking at different scenarios which pose a risk to clients.

It should be noted that these are extreme examples and in our view are likely be very rare. In most cases the Principles and Codes of Conduct, together with the additional protections provided through the Accounts Rules, will provide effective mitigation in relation to risks to client money.

We therefore consider that on balance the risk of consumer detriment is more than mitigated by the potential redress mechanisms available, albeit that these take considerable time and determination for clients to pursue.

We welcome view from respondents on our assessment of these risks and the potential impacts.

Scenario and risk	Impact	Redress/Regulatory Action
A firm asks a client for payment on account of money to be used to pay for a medical expert and pays the money straight into the office account (as would be allowed under the Accounts Rules with a change of definition). This will allow the firm to use that money (mixed with all other money belonging to the firm) to pay staff salaries. However the firm is at the limit of its overdraft and as a result the expert is not paid for several months.	<ul style="list-style-type: none"> • Delay in that client's matter which may lead to that person not receiving damages as soon as he might. • The expert refuses to take on legal work in the future with broader detriment to access to good quality evidence • Risk that client has to pay again 	<ul style="list-style-type: none"> • Our Accounts Rules will require firms to have systems in place to ensure that this cannot happen through oversight • Report to us and potential investigation for breach of our Accounts Rules as the firm is not safeguarding money belonging to clients or acting in the best duty of the client (standards in the Codes of Conduct) • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k) • If payment made by credit card and delay in service derives from delay in payment, section 75 of Consumer Credit Act may apply if amount is between £100 and £30,000
A firm does not offer fixed fees for general litigation work and asks instead for	<ul style="list-style-type: none"> • The client is left out of pocket and without the work being done – leading to delay and 	<ul style="list-style-type: none"> • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k)

<p>payment on account of costs. A client pays over £2000. The firm then fails to do the work.</p>	<p>inconvenience</p> <ul style="list-style-type: none"> • The experts and other third parties are not paid and will have to be paid again by the client if the work is to be done by another firm • Potential intervention by SRA if dishonesty suspicion arises 	<ul style="list-style-type: none"> • If payment made by credit card and is between £100 and £30,000 s75 of Consumer Credit Act applies • Report to us and potential investigation for breach of our Accounts Rules, e.g. as the firm is not performing all instructions received from the client (standards in the Codes of Conduct) • Potential recovery of funds depending on application of statutory trust if the SRA intervenes and the funds are still available • Negligence claim • Claim on compensation fund (current position) as not doing work that has been paid for is seen as failure to account
<p>A sole practitioner takes payments on account of costs and for payments to third parties for which the firm is liable for, such as Counsels fees from a range of clients. The total amount of the money so held in the firm's business account is in excess of £125,000 The sole practitioner subsequently become bankrupt and ceases working</p>	<ul style="list-style-type: none"> • Several clients are left out of pocket and without the legal advice being received as they thought • The experts and other third parties are not paid and will have to be paid again by the client if the work is to be done for the client • Client potentially becomes an unsecured creditor 	<ul style="list-style-type: none"> • Claim on Compensation Fund post closure for all amounts lost by clients (current position) • Negligence claim/ claim on PII • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k) • If payment made by credit card and is between £100 and £30,000 s75 of Consumer Credit Act applies – could be part payment or instalments • Claim against bankrupt estate • Report to us and potential investigation for breach of our Accounts Rules as the firm is not safeguarding money belonging to clients or acting in the best duty of the client (standards in the Codes of Conduct). Solicitor would also have practicing certificate suspended due to bankruptcy
<p>We intervene (close</p>	<ul style="list-style-type: none"> • Clients suffer 	<ul style="list-style-type: none"> • Claim on Compensation Fund

<p>down) a 2 partner firm due to suspected dishonesty. Both partners have been transferring significant amounts client money (as now defined) – mainly probate funds and personal injury damages - from client account to pay for fictitious disbursements or for unjustifiable sums on account of costs. They have then used these amounts to pay for personal expenses that have no relation to the clients concerned</p>	<p>losses</p> <ul style="list-style-type: none"> • Firm does not do work • Inconvenience to client • Client becomes an unsecured creditor • Client loses money 	<p>post intervention for all amounts lost (current position)</p> <ul style="list-style-type: none"> • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k), payment by insurer in case of intervention • If payment made by credit card and is between £100 and £30,000 Section 75 of Consumer Credit Act applies • Statutory trust will apply for those where money is left at the point of intervention • Enforcement action after inspection due to dishonesty and failure to safeguard money and assets entrusted by the client
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Annex 1.5 - Indicative list of guidance areas and example case studies

Proposed areas of guidance - SRA Accounts Rules

- 1 Acting as a trustee and client money
- 2 What is client money
- 3 Name of client account
- 4 Withdrawals to make payments to Charity
- 5 Who can make withdrawals from client account?
- 6 Residual balances due to a client
- 7 Requirements to pay interest
- 8 Accounting records and systems
- 9 Accountant's Reports
- 10 Record keeping around operation of joint accounts
- 11 Operation of a client's own account
- 12 Treatment of legal aid money/monies received relating to formal appointments (insolvency)
- 13 Use of Third Party Managed Accounts
- 14 Client account as a banking facility
- 15 Waiver provisions
- 16 Out of scope monies in an MDP

Case study 1 - payment on account of costs

A client instructs Firm X in respect of his divorce. The firm informs the client that their likely fees in total are likely to be in the region of £2000 but may increase if further work is needed in respect of ancillary matters.

Firm X gives the client a full breakdown of the likely costs and expenses in dealing with the matter (in accordance with Standards 8.6 and 8.7 of the SRA Code of Conduct for Solicitors/Standard 7.1(b) of the SRA Code of Conduct for Firms). Firm X also advises the client about the protections that are available to him and confirm the same in the client care pack (in accordance with Standard 8.9 of the SRA Code of Conduct for Solicitors). The client makes a cash payment on account to the firm of £2,000.

Firm X pay the sum (£2,000) into their business account in accordance with the SRA Accounts Rules 2017. Firm X have an obligation to ensure that they safeguard money entrusted to them by the client (Standard 5.2 of the SRA Code of Conduct for Firms).

The client's matter runs smoothly and he and his wife are able to agree on many issues. On completion of the matter, Firm X deliver a bill to client confirming that the firm's total costs, including all expenses, come to £1,200 plus VAT, a total of £1,440.

The surplus £560 becomes client money as it is money held by Firm X relating to legal services they have delivered to the client but is not payment for the firm's fees or due to a third party. The firm ask the client for his bank details so that a BACS payment of the amount he is due to be refunded can be made.

In accordance with Rule 4.1 and 4.2, Firm X transfer the £560 from its business account into client account. The client then makes contact with Firm X and provides his bank details so that the £560 can be returned. Firm X, in accordance with Rule 2.4, promptly make the payment to the client.

Case study 2 - making prompt payments

Firm Y acts for a minor in suing a third party driver for significant injuries she suffered in a road traffic accident. The accident left the child's parents unscathed but she will need long term care and rehabilitation.

The driver's insurer admits liability and the firm agrees both a substantial award of damages (of £350,000) as well as payment of their legal costs in full. Despite a request that the insurer makes two payments, the insurers in fact make a single bank transfer for the entire amount into the firm's office account. After two weeks of chasing, the firm realise the mistake and, in accordance with Rule 6.1, immediately transfers the damages portion of the settlement to the client account. The client's parents are informed of what happened and ask for the damages to be sent to their daughter's account to fund payments they urgently need to make on her behalf.

Rule 2.4 requires firms to ensure that client money is returned promptly to the client as soon as there is no longer any proper reason to retain those funds. 'Promptly' is not a defined term and will depend on all the circumstances of the matter, the nature of the firm and the instructions received - underpinned by the obligation in the SRA Code of Conduct for Solicitors and Firms to ensure that money and assets are safeguarded and the SRA Principles including that they act in the client's best interests.

The lead solicitor, after speaking to his supervisor (who is also the firm's COFA), authorises an immediate return (on the same day instructions are received) of the client's money. Firm Y took into account the client's circumstances, the delay already encountered and the parents' need to have the monies as soon as possible to pay for the child's care. In addition they also consider their obligation under Rule 7 of the SRA Accounts Rules and pay to the client a fair amount of interest for the client money they had held.